DOCUMENT RESUME

ED 027 640 EA 002 097

By-Dubel, Robert Y.

"Essential Ingredients of a Modern Grievance Procedure."

Pub Date 17 Feb 69

Note-9p.; Paper presented at the Annual Meeting of the Amer. Assn. of School Admin. (101st, Atlantic City, N.J., Feb. 17, 1969).

EDRS Price MF-$0.25 HC-$0.55

Descriptors-Administrator Responsibility, *Arbitration, Boards of Education, *Grievance Procedures, Principals, *Public School Teachers, School Superintendents, *Teacher Administrator Relationship

A grievance procedure should be viewed more comprehensively than most experts view it. It is a vehicle which permits an employee to seek redress from a possible misapplication, misinterpretation, or alleged violation of State laws, the policies of a board of education, or the administrative rules and regulations designed to implement such policies. A grievance procedure should include the following ingredients: (1) A statement that it will be administered fairly and used only when other means fail; (2) a statement that its purpose is to minimize misunderstandings and promote positive staff morale; (3) clarity of all relevant definitions; (4) inclusion of at least four levels of grievance procedures--principal, assistant superintendent, superintendent or his designated representative, and board of education; (5) a stipulation that during the appeal process the grievant must conform to the directive or action of his administrative supervisor which caused the grievance, and (6) a statement that the grievent may be accompanied by counsel. The procedure should not require that the grievant's complaint first be processed by a committee on professional rights and responsibilities named by the local education association. If arbitration becomes necessary, the cost should be borne equally by employer and employee. (HW)

"ESSENTIAL INGREDIENTS OF A MODERN GRIEVANCE PROCEDURE"

Robert Y. Dubel
Assistant Superintendent
Staff and Community Relations
Baltimore County Schools

American Association of School Administrators
February 17, 1969

Fifteen years ago, a grievance was defined in the textbook, Personnel Management, by Michael Jucius, as follows: "Any discontent or dissatisfaction, whether expressed or not and whether valid or not, arising out of anything connected with the company that an employee thinks, believes, or even 'feels' is unfair, unjust, or inequitable." Dr. Jucius came to the conclusion that a procedure should be developed to enable the employee to communicate with his superiors about his problems, and he presented a diagram which bears a remarkable resemblance to the typical grievance procedure used in many of our school systems today.

In 1966, Myron Lieberman and Michael Moscow stated in their book, Collective Negotiations for Teachers, that "some agreements define a grievance as virtually any complaint which a teacher has. In most agreements, however, grievances are defined as a charge that the collective agreement is being violated or misinterpreted." The authors make it quite clear that they strongly support the latter interpretation.

Last year, Eric Rhodes, editor of the publication, "Negotiations Management," defined a grievance as "an allegation by a person or persons, in the unit that their rights under the negotiated agreement have been violated." Mr. Rhodes makes it clear that he would restrict use of the grievance procedure "only to matters pertaining to the negotiated agreement." Recognizing that complaints pertaining to policies not in the negotiated agreement are likely to arise, Mr. Rhodes states:

EA 002 097

U.S. DEPARTMENT OF HEALTH, EDUCATION & WELFARE
OFFICE OF EDUCATION

THIS DOCUMENT HAS BEEN REPRODUCED EXACTLY AS RECEIVED FROM THE PERSON OR ORGANIZATION ORIGINATING IT. POINTS OF VIEW OR OPINIONS STATED DO NOT NECESSARILY REPRESENT OFFICIAL OFFICE OF EDUCATION POSITION OR POLICY.

"Grievances regarding matters outside the scope of the agreement are handled as they have been in the past." This could mean many things! They could be ignored; they could be botched; or they could be treated with a separate grievance procedure. Wouldn't this be confusing to teachers? Unfortunately, frustration, disappointment, and anger are not discriminating enough to channel themselves into a procedure limited to matters which have been negotiated.

Although I fully realize that I am speaking contrary to the opinions of most of the people who are writing textbooks or who are serving as consultants in the field of professional negotiations, I lean toward the more comprehensive approach of defining and treating grievances, which was formulated in 1954 by Dr. Jucius, than I do toward the present day contention that grievance procedures should process only complaints related to negotiated agreements. I suggest that we should be wary of those college of education lecturers, textbook authors, and consultants in the field of professional negotiations who speak as if their pronouncements are absolutes and who appear to be bent on formulating a strict discipline in this field prematurely. This group consists almost exclusively of persons whose main experience has been in reacting to troublesome and unusually complex situations in the great cities of our nation. By and large, methods learned in the arena of industrial disputes have been superimposed upon these super-sized school systems without due consideration that they operate from an entirely different legal base than do the big three auto manufacturers or a railroad. I fear that many of us will make fatal mistakes if we apply the lessons learned in the big cities to our school systems of varied size and composition.

Thus, in this presentation, I intend to ignore the advice of today's expert that the grievance procedure should be limited to disputes regarding the components of a negotiated agreement. I will use instead a comprehensive

definition of a grievance procedure, namely, that it is a vehicle which permits an employee to seek redress from a possible misapplication or misinterpretation or an alleged violation of state laws, the policies of a board of education, or the administrative rules and regulations designed to implement such policies. I am making the assumption in my definition that the teacher is personally and adversely affected by decisions growing out of the above.

I would also like to make it crystal clear that I do not include either voluntary or compulsory arbitration as an "essential ingredient of a modern grievance procedure." I am fully cognizant of the fact that arbitration has been included in many grievance procedures, however, and I will return to this subject later in this presentation.

Essential Ingredients

1. It seems to me that when a superintendent and a board of education decide to either write or negotiate a grievance procedure, they should take advantage of the opportunity to state in an introduction that they have confidence that the administrative staff will generally administer policies intelligently, fairly, and with understanding, and that a grievance procedure is only necessary to handle an extremely small percentage of personnel problems.

2. The document should clearly state the purpose of the grievance procedure as a vehicle to minimize misunderstandings and to promote positive staff morale.

3. Certainly, the matter of definitions should be treated precisely and in considerable detail early in the written procedure. Probably the most important question which can be answered in the section on definitions is: "What is a grievance?" I suggest that the grievance procedure should be clearly limited to the problems that individuals have with the interpretations of existing law or

policies. Obviously, a proposal to secure improved benefits or more liberal policies for all employees or a class of employees belongs more properly in the arena of negotiations.

The section on definitions should explain who is covered by the grievance procedure. Are we talking about classroom teachers only? If so, who is a classroom teacher? Do we mean all professionals? Who is a professional? It seems logical to me that all professionals, except the superintendent of schools, should have access to the grievance procedure, beginning at the appropriate level. (The matter of levels in the procedure will be discussed later.) Again, I realize that there is a strong trend toward making the grievance procedure apply only to teachers. Usually, a teacher is defined as a person who spends 50 percent or more of his time in the classroom.

I suggest that we are attempting to sweep part of our problem under the rug if we draw the line for our grievance procedure at the level of the classroom and assume that all other professional employees are management and that they are therefore always happy and satisfied. Such a contention becomes particularly unrealistic in a school system which employs several hundred school administrators at various levels of responsibility. Certainly, we are interested in the morale of our principals, vice-principals, specialists, and central office personnel. Obviously, such persons experience grievances under the broad definition advanced by Dr. Jucius 15 years ago. It seems logical to me that we treat such unhappiness on the part of a person in this category under a written procedure which is made known to everyone. If there is an agreement on this concept, then I see no reason for having two separate, written documents.

I am purposely limiting my remarks to grievance procedures for professional personnel. I do not suggest that our classified or supporting personnel

do not have grievances or that we should not treat their grievances. I do think that a separate, yet similar, grievance procedure for classified or supporting personnel is necessary, because generally they work under different provisions of the state law and different policies of the board of education.

4. I believe that it is absolutely essential that we have at least three levels in our grievance procedures, with the possible exception of a very small school district where the building principal is the chief administrative officer of the school system. Our experts generally agree that the great majority of grievances are and should be resolved at Level I which usually means the principal. Most authors and consultants in the field estimate that 90 percent of our grievances are settled at this level. This is a pretty safe estimate, because as far as I know, there has been no study which would prove otherwise. As long as we are guessing and can't be proved wrong, I would put my estimate at about 98 percent. Usually, grievances at this level are handled through an informal conference during which no records are kept.

Level II - If a teacher is not satisfied with the disposition of his problem at Level I, he should be required to submit the particulars of his grievance in writing, within a specified period of time, to the person who resides at Level II. In a small school system, this may be the superintendent, while in a larger school system, this may be a director or an assistant superintendent. This transmittal should be made on a standard form provided by the office of the superintendent and should be made with sufficient carbon copies for the person at the preceding level, the level of current action, and for the central office file. The person to whom the appeal is made must of necessity also be saddled with a time limit for rendering a decision.

Level III - If the grievance is not resolved at Level II, it should then involve the superintendent, or his designated representative. Many school

systems, including the one which employs me, have taken the position that the superintendent of schools cannot afford the time to hear grievances, and that the last stop in the appeal route, before the complaint goes before the board of education, should be with an assistant or deputy superintendent. Again, the standard form should be used and the procedure should provide time limits for the appeal and for the rendering of the decision.

Level IV - If the grievant is not satisfied with the decision of the superintendent of schools, he should be permitted to appeal to the board of education within a specified time period.

Beyond Level IV, it seems to me that the grievance procedure should remain silent. If state law provides for appeal to the state superintendent of schools, to the state board of education, or to the courts, nothing contained in the grievance document will alter this procedure or diminish a teacher's rights.

5. Either in the section on definitions or in the section which identifies levels of appeal, it should be made clear that during this process the grievant must conform to the directive or action of his administrative supervisor which caused the grievance.

6. The procedure should also specify in the appropriate place that the grievant will be permitted to be accompanied by counsel. There is a trend toward prohibiting the employee from using counsel from any organization which does not have exclusive bargaining rights. For example, if a NEA affiliate has won exclusive bargaining rights in a school system, a teacher would be prohibited from bringing with him a representative of the American Federation of Teachers. I feel strongly that such a provision may deny a teacher expertise which could protect his rights and that any grievance procedure should permit a teacher to bring along counsel of his choice.

7. Some grievance procedures require that a teacher's complaint be processed first by a committee on professional rights and responsibilities named by the local education association. The argument goes that this makes the association responsible for screening unwarranted complaints. While such a procedure has its temptation to those of us who spend many hours in administering a grievance procedure, it also has its pitfalls and its element of unfairness. Actually, the teacher's complaint is against the staff and the interpretation of board policy; he is not complaining about his peers or association policy. It seems to me that a grievant would reach the complete level of frustration if a complaint which was very real to him was knocked out by a committee of his peers and he was given absolutely no opportunity to seek administrative redress.

The Matter of Arbitration

If your grievance procedure terminates with binding arbitration, or if you think it should, much of what I have said regarding broadening the scope of the grievance procedure must be a bit frightening. I thoroughly agree with the modern day experts that the scope of the grievance procedure should be limited to the negotiating agreement, if binding arbitration becomes an essential ingredient of that document. I feel very strongly that binding arbitration is foreign to our whole American concept of control of education by lay boards. Thus, if binding arbitration is to be employed, I take the pragmatic position that it should apply to as few things as possible.

Most of the attorneys general in our states have rendered opinions that binding arbitration is an unconstitutional delegation of the authority of the state or its agencies. We must be aware, however, that there is a trickle of activity, not yet a trend, contrary to these opinions. Several school districts have installed binding arbitration as the final step in their grievance procedures, and

a circuit court in Michigan has ruled that such action is constitutional. It is probably inevitable that most school boards will ultimately have requests for compulsory arbitration.

Many more school systems have adopted grievance procedures with advisory arbitration as the final step. If we decide to go the route of arbitration, at least the legal prerogative of the board to render final educational decisions is preserved by the process of advisory arbitration. Even with advisory arbitration, the prerogatives of the staff and the board of education are eroded as an outside force (the arbitrator) generally plays a heavy and influential hand in the matter of interpretation of policy.

The process of arbitration is an expensive one, because you certainly want a competent, paid professional to handle each case. Thus, if you use either binding or advisory arbitration, I strongly suggest that the cost be borne equally by the employee organization and the employer. This will serve as a limited deterrent to submission of frivolous disputes to costly arbitration.

Responsibility of Administrative Staff

It is extremely important that all persons affected by the grievance procedure be briefed as to its contents. It is particularly important that administrative and supervisory personnel be thoroughly trained with regard to their responsibilities in making the procedure work.

Most school administrators have prided themselves in having "an open-door policy." Such attitudes and actions at succeeding levels of authority can literally wreak havoc with a grievance procedure and can be patently unfair to administrators in subordinate positions. For example, in the levels I have outlined above, a teacher should not be permitted to skip Level I, usually the principal, and take his grievance directly to a director or the superintendent of schools. First of all, since we all seem to agree that most grievances are settled at the first

level, valuable time of busy administrators is usurped unnecessarily. Secondly, in this example, if the grievance is against an action by the principal, he is also placed on trial before his superior administrator, possibly without his knowledge. Therefore, we have a case of tit for tat. In gaining a guaranteed system of due process, the teacher must give up a frequently-followed process of popping in at any level of administration at any time with a complaint.

Conclusion

Perhaps, I have made the entire grievance process sound too complicated and too burdensome. If you already have a written grievance procedure, I am certain that I could learn much in a dialogue with you. If you have not yet adopted a written grievance procedure, I urge you to proceed in this direction even if you have not yet entered into a process of professional negotiations. I think that by and large you will find that you are merely committing to writing the positive staff relations which you are already practicing.